

*Application No. 09/737118*  
*Page 3*

*Amendment*  
*Attorney Docket No. S63.2N-6748-US03*

### **Remarks**

This Amendment is in response to the Office Action dated December 10, 2003. Claim 85 has been amended as suggested. The Examiner's assistance is appreciated. Claim 90 has been canceled.

### **Affirmation of Election**

Applicant affirms that it elected to prosecute Species II without traverse. Accordingly, claim 86 is withdrawn.

### **§102(e) Rejection of Claims 85, 87**

Claims 85 and 87 were rejected as being anticipated by Sharkey et al, U.S. Patent 5,540,701. A close inspection of the '701 patent shows that it does not disclose each of the elements of claim 85 or 87. Those claims require an elongate tubular member with a slit extending along the entire length. It cannot reasonably be stated that Figs. 4 and 5 of the '701 patent disclose an elongate tubular member. A coiled spring is simply not an elongate tubular member. Figs. 7 and 8 of the '701 patent do not have a slit extending along the entire length of the device and the device with its gap is certainly not an elongate tubular member. The rejection is traversed.

### **§103 Rejection of Claims 88-89**

Claims 88 and 89 were rejected as being obvious over Sharkey et al, U.S. Patent 5,540,701 in view of Dereume et al., U.S. Patent 5,723,004. As noted above, the '701 patent does not teach or suggest an elongate tubular member with a slit extending along the entire length. Sharkey et al '701 does not teach or suggest the device of claim 85 of which claims 88

*Application No. 09/737118*  
*Page 4*

*Amendment*  
*Attorney Docket No. S63.2N-6748-US03*

and 89 depend. A secondary reference, Dereume et al '004 has been applied in the rejection. It is relied upon as showing an elongate tubular member having an elastomeric outer sleeve to provide better implantation into a vessel.

The invention as claimed is more than just a combination of an elongate tubular member and an elastomeric outer sleeve. The invention of claims 88-89 is to a protective sleeve which comprises an elongate tubular member having a slit extending along the entire length and flaring along with an outer sleeve disposed about the tubular member to maintain the slit in a closed configuration. The '701 reference does not even disclose or teach an elongate tubular member with a longitudinal slit let alone any reason to cover that tubular member with an outer sleeve to maintain the sleeve in a closed configuration.

The '004 reference refers to a cover 23 and bonding of the cover to the tubular support. As noted in the Office Action, the '004 reference does not have an underlying tubular member with a longitudinal slit. Thus, neither reference has a teaching or a suggestion of a protective member that is an elongated tubular member having a longitudinal slit that is in turn covered by an outer sleeve that maintains the slit closed. There is nothing in either of the references which would suggest any reason to have an elongated tubular member with a longitudinal slit let alone taking that device and encasing it in an outer sleeve to close that slit. There is no basis to reject the claims. The rejection is respectfully traversed.

*Application No. 09/737118*  
*Page 5*

*Amendment*  
*Attorney Docket No. S63.2N-6748-US03*

**Interference Status**

Finally, this application was filed with a preliminary Amendment that included a request for Interference under Rule 1.607 with US Patent 6,110,146. Nothing has been received concerning the status of that request.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: January 28, 2004

By: \_\_\_\_\_

  
Scott Q. Vidas

Registration No.: 30812

6109 Blue Circle Drive, Suite 2000  
Minnetonka, MN 55343-9185  
Telephone: (952) 563-3000  
Facsimile: (952) 563-3001

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